

January 13, 2009

**MEMORANDUM TO:** Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

**FROM:** Stephen J. Claeys  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Tapered Roller Bearings from the People's Republic of China:  
Issues and Decision Memorandum for the Final Results of the  
2006-2007 Antidumping Duty Administrative Review

**SUMMARY:**

We have analyzed the case briefs and rebuttal briefs submitted by the Timken Company, ("petitioner" or "Timken") and Peer Bearing Company - Changshan ("respondent" or "CPZ") in the 2006-2007 administrative review of the antidumping duty order on tapered roller bearings ("TRBs") from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes to Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 41033 (July 17, 2008) ("Preliminary Results").

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments.

**Case Issues:**

- Comment 1: Treatment of CPZ's U.S. Sales
- Comment 2: Treatment of By-Product Offsets
- Comment 3: Calculation of Normal Value Based on Control Number versus Model Number
- Comment 4: Treatment of Forging Subcontractor's Factors of Production
- Comment 5: Surrogate Value for Steel Scrap
- Comment 6: Surrogate Value for Wire Rod
- Comment 7: Surrogate Value for Steel Bar
- Comment 8: Surrogate Value for International Freight
- Comment 9: Calculation of Factors of Production for a Particular Model
- Comment 10: Treatment of Inland Freight for Subcontractors
- Comment 11: Treatment of Negative Dumping Margins ("Zeroing")

## **Background:**

The merchandise covered by the order is tapered roller bearings, as described in the “Scope of the Order” section of the Preliminary Results. The period of review (“POR”) is June 1, 2006, through May 31, 2007. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our Preliminary Results. On August 26, 2008, Timken and CPZ submitted case briefs, and on September 5, 2008, Timken and CPZ submitted their respective rebuttal briefs. On November 21, 2008, we extended the time limit for the completion of the Final Results of this review by sixty days until January 13, 2009. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China; Extension of Time Limit for Final Results of the 2006-2007 Administrative Review, 73 FR 70619 (November 21, 2008). On December 9, 2008, the Department of Commerce (“Department”) held a hearing with interested parties regarding issues raised in case and rebuttal briefs.

## **DISCUSSION OF THE ISSUES**

### **Comment 1: Treatment of CPZ’s U.S. Sales**

Timken argues that the Department should consider CPZ’s sales prices to the importer as the relevant U.S. price in its margin calculations for the Final Results and use export price (“EP”) to classify these sales.

CPZ contends the Department should continue to use its sales of subject merchandise from its affiliated U.S. entity to unaffiliated U.S. customers as the comparison sales for the purpose of calculating CPZ’s margin.<sup>1</sup>

### **Department’s Position:**

We agree with Timken, and find that the relevant U.S. sales prices for purposes of calculating CPZ’s dumping margin are CPZ’s sales to the importer, rather than the sales prices from CPZ’s U.S. affiliate to unaffiliated customers. Though Timken in its case brief requested that the Department collect the necessary sales data, the sales prices from CPZ to its importer for all transactions during the POR are not on the record of this review. Section 776(a)(1) of the Tariff Act of 1930, as amended (“Act”) provides that, if the necessary information is not available on the record, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. As facts available, in order to calculate CPZ’s U.S. prices on an EP basis, rather than a constructed export price basis, we will derive a ratio, based on the sales documentation on the record<sup>2</sup> demonstrating the prices between parties,

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<sup>1</sup> Due to the proprietary nature of this issue, for a full summary of the parties’ arguments, see Memorandum to the file, through Erin Begnal, Program Manager, AD/CVD Operations, Office 8, from Demitri Kalogeropoulos, International Trade Compliance Analyst, AD/CVD Operations, Office 8, regarding “Peer Bearing Company – Changshan, CPZ Final Results of Administrative Review: Program Analysis Memorandum, Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People’s Republic of China,” dated January 13, 2009 (“Analysis Memo”).

<sup>2</sup> See Letter from CPZ titled, “Section A Questionnaire Response of Peer Bearing Company – Changshan; Tapered Roller Bearings from the People’s Republic of China,” (October 31, 2007) (“Section A Questionnaire Response”) at

to apply to CPZ's reported U.S. sales. Due to the proprietary nature of this issue, the Department has further addressed parties' arguments in the Analysis Memo.

## **Comment 2: Treatment of By-Product Offsets**

CPZ argues that the Department erred when it failed to include by-product offsets in its margin calculation and that it incorrectly treated certain of CPZ's by-product offsets as raw material inputs. CPZ contends that it claimed all of its by-products as offsets. CPZ argues that it supported those claims with all the data necessary for the Department to calculate the offsets and with all the necessary documentation including production and sales data and sample commercial documents. Citing Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485, (July 15, 2008) ("OTR Tires"), and accompanying Issues and Decision Memorandum ("IDM") at Comment 34; and previous reviews in this proceeding, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review, 71 FR 2517, (January 17, 2006), CPZ contends it is the Department's established practice to grant by-product offsets when reported.

Timken states that it is not clear why the Department treated certain scrap fields as direct material inputs but suggests that this may have been done in order to impute steel scrap consumption as the best information available for capturing possibly underreported steel amounts. Timken argues that, if this is the case, the Department should value the scrap fields using more appropriate surrogate values (i.e., surrogate values for steel instead of steel scrap) in order to more accurately reflect production costs associated with steel consumption.

CPZ rebuts that, to the best of its ability, it comprehensively reported all of the steel inputs consumed in the production of subject merchandise. CPZ contends there is no evidence on the record that supports adjusting for potential underreported steel amounts by treating CPZ's reported scrap production as direct material inputs. CPZ argues that the Department's treatment of CPZ's steel scrap as a direct material input is an error, and that for the Final Results, the Department should fully grant CPZ's steel scrap offsets.

### **Department's Position:**

In our Preliminary Results, we stated that CPZ did not claim byproduct offsets and was unclear in its response to our questionnaire regarding scrap quantities generated and quantities sold. See Preliminary Results at 73 FR at 41039. Therefore, for the Preliminary Results, we did not grant a steel scrap offset in our margin calculation. See id. In our post-preliminary questionnaire, we asked CPZ to specify if it was claiming an offset for steel scrap and to demonstrate the quantities generated and quantities sold. In response, CPZ stated that it was claiming a byproduct offset for

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Exhibit A-16. See also Letter from CPZ titled, "Supplemental Section A and C Questionnaire Response of Peer Bearing Company – Changshan; Tapered Roller Bearings from the People's Republic of China," (April 29, 2008) at Exhibit SA-1.

all steel scrap sold and it provided supporting documentation for the sales of this scrap.<sup>3</sup> After reviewing CPZ's response, we have determined to remove CPZ's reported scrap inputs from our calculation of direct material inputs because CPZ has clarified that those inputs represent scrap that was sold, not reintroduced into its production process. Further, we have granted byproduct offsets for CPZ's claimed scrap sales because we have determined that the claims are sufficiently supported by evidence on the record of this proceeding.<sup>4</sup> This is consistent with the Department's practice. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review, 71 FR 2517 (January 17, 2006).

### **Comment 3: Calculation of Normal Value Based on Control Number versus Model Number**

CPZ argues that the Department should base its control numbers ("CONNUMs") on CPZ's bearing model numbers instead of the CONNUM criteria used by the Department in the Preliminary Results. CPZ contends the CONNUM system used by the Department is critically deficient due to the absence of any CONNUM characteristic for significant TRB characteristics such as width. Consequently, CPZ argues, because of the varying steel consumption amounts for different products within the same CONNUM, the Department's CONNUM method results in distorted dumping margins. Citing Lasko Metal Products v. United States, 43 F.3d 1442 (Fed. Cir. 1994) (quoting Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990)), CPZ contends the Department must heed its mandate to calculate dumping margins "as accurately as possible." Thus, CPZ argues that the Department, for the Final Results, should base its CONNUMs on CPZ's bearing model numbers.

Timken did not comment on this issue.

#### **Department's Position:**

We agree with CPZ that for the Final Results, basing normal value on CPZ's product code rather than the CONNUM based on physical characteristics is more accurate for purposes of calculating CPZ's dumping margins. Although physical characteristics (including product type, inner diameter, and outer diameter) were included in the Department's original questionnaire for this administrative review, in prior reviews of this order, the Department did not require that respondents report their CONNUMs based on physical criteria. Instead, in prior reviews of TRBs, while certain criteria were included in the questionnaire (including product type), respondents reported their CONNUMs based on product code or only reported product code for purposes of matching U.S. sales to FOP data. Because the Department never required that these three physical characteristics be the basis of CONNUM in prior reviews, consistent with prior reviews, the Department finds it more appropriate to base CONNUMs on CPZ's reported

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<sup>3</sup> See "Second Supplemental Section A-D Questionnaire Response of Peer Bearing Company – Changshan; Tapered Roller Bearings from the People's Republic of China" (August 11, 2008) ("CPZ's Second Section A-D Supplemental") at page 2.

<sup>4</sup> See CPZ's Second Section A-D Supplemental at exhibits D-2 and D-3.

product code, which will ensure more accurate dumping margins by matching identical merchandise for comparison purposes.

#### **Comment 4: Treatment of Forging Subcontractor's Factors of Production**

Timken argues that the Department should calculate CPZ's forging factors of production ("FOPs") using adverse facts available ("AFA"). Timken points to evidence that the reported data for CPZ's forging operations are incomplete,<sup>5</sup> thus noting that facts available is applicable under section 776(a) of the Act. Additionally, Timken contends that CPZ failed to document either that it attempted to collect such information or that the subcontractor had refused to provide such information. Timken asserts that CPZ did not cooperate to the best of its ability by not obtaining the forging subcontractor's FOPs and, as such, it argues that AFA may be applied to the forging FOPs in accordance with section 776(b) of the Act. Timken cites to several prior determinations in which the Department has applied AFA when respondents have failed to demonstrate that they have made their best efforts to obtain FOP information from unaffiliated suppliers.<sup>6</sup>

CPZ argues that both record evidence and Department precedent do not support Timken's assertion that the forging FOPs should be restated using AFA. CPZ contends that extraordinary efforts were made to provide complete FOP data from 15 out of its 16 subcontractors. CPZ contends that these efforts, along with the extensive responses and self-initiated corrections supplied to the Department during the POR, demonstrate that CPZ has made every effort to fully cooperate with the Department by supplying complete and correct information whenever necessary. CPZ notes that the Department rejected a similar argument forwarded by Timken during the investigation of a Peer ball bearing company, saying that Peer was able to supply a substantial percentage of subcontractor FOP data for services (including forging).<sup>7</sup> In this case, CPZ argues, it has supplied a substantial portion of the forging FOPs, while providing 100% of non-forging FOP data.

CPZ also points out that in a prior administrative review ("AR") of TRBs from the PRC, the Department rejected a request to apply AFA to Premier (a respondent) who failed to supply FOP data that covered 100% of subject merchandise because Timken could demonstrate neither that Premier benefitted from the incomplete data nor supplied evidence that Premier withheld

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<sup>5</sup> Timken cites to Letter from CPZ titled, "Supplemental Section D Questionnaire Response of Peer Bearing Company – Changshan; Tapered Roller Bearings from the People's Republic of China (Proprietary)," (April 29, 2008) ("Section D SQR") at page 7 and Exhibit 17.

<sup>6</sup> Timken cites to, e.g., Certain Activated Carbon from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 72 FR 9508 (March 2, 2007), and accompanying IDM at Comment 20.

<sup>7</sup> CPZ cites to Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof from the People's Republic of China, 68 FR 10685 (March 6, 2003) and accompanying IDM at Comment 17 ("Ball Bearings").

information or failed to cooperate to the best of its ability.<sup>8</sup> CPZ argues that, not only does Timken’s argument fail to meet the precedent set in this previous review, but that while the FOPs provided do not cover 100% of the subject merchandise, they do cover 100% of the subject merchandise models sold during the POR. As such, CPZ concludes that the Department should continue to use the forging subcontractor FOPs as provided, in accordance with past practice.

**Department’s Position:**

Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Furthermore, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.” See also Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act (“URAA”), H.R. Rep. No. 103-316 at 870 (1994).

While we find that CPZ was unable to provide the requested FOP information for one of its four forging subcontractors (while providing the requested information from 15 of its 16 total subcontractors), requiring the application of facts available with respect to certain of its forging FOPs, we find that CPZ cooperated to the best of its ability during the course of this proceeding to comply with the Department’s requests for information. CPZ stated in its Section D supplemental questionnaire response, in response to the Department’s request that CPZ report the FOPs and per-unit consumption for each subcontractor, that it had been unable to obtain FOP information from one of its forging subcontractors. Thus, we find that CPZ was forthcoming with the FOP deficiencies in its supplemental questionnaire response, and did not impede the Department’s proceeding. Additionally, because the Department did not request that CPZ obtain the missing FOP data or demonstrate that it made efforts to obtain the missing FOP data, we do not find that CPZ failed to cooperate by not acting to the best of its ability to comply with a request for information.

With respect to Timken’s assertion that consistent with Activated Carbon, the Department should apply AFA when respondents have failed to demonstrate that they have made their best efforts to obtain FOP information from unaffiliated suppliers, we find that the instant case is distinct. In Activated Carbon, the extent by which the respondent failed to provide FOP data was much more significant than CPZ’s failure to obtain FOPs from one of its subcontractors. Additionally, in Activated Carbon, the respondent failed to provide FOPs for certain of its suppliers of the subject merchandise, whereas in the instant case, the missing FOPs were not for complete production of

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<sup>8</sup> CPZ cites to Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953 (January 10, 2001) and accompanying IDM at Comment 31.

a product, but rather for a stage in the production process that is subcontracted out to unaffiliated parties.

Thus, pursuant to section 776(a)(2)(A) of the Act, we have relied on facts otherwise available with respect to CPZ's missing forging FOPs, but without an adverse inference prescribed under section 776(b) of the Act. As facts available, we continued to use the forging FOPs reported by CPZ, which includes the FOPs for three of its four forging subcontractors in the Department's normal value calculations.

### **Comment 5: Surrogate Value for Steel Scrap**

Timken states that, in the Preliminary Results, the Department valued the scrap generated from CPZ's roller and ring production under Indian Harmonized Tariff Schedule ("HTS") 7204.41, a category that includes waste and scrap of cast iron. Timken notes that CPZ uses alloy steel in the production of its rings and rollers, thus, the scrap produced will be alloy, not cast iron. Timken suggests that, for the purposes of the Final Results, the Department should value the scrap under HTS 7204.29.90, which consists of waste and scrap of alloy steel.

CPZ did not comment on the surrogate value for roller and ring production scrap.

Timken points out that, in the Preliminary Results, the scrap steel generated from the production of the cage, Indian HTS 7204.41, is valued at 33.09 Rupees ("Rs") /Kilogram ("Kg"), while the input steel used to produce the cage, Indian HTS 7209.16, is only valued at 22.80 Rs/Kg. Timken argues that this surrogate value should be rejected as aberrational because, logically, scrap should be priced lower than the product from which it is derived. Timken suggests that the Department look to another Indian HTS category valued lower than that of cage steel to value this byproduct. Specifically, Timken submits that HTS subheading 7204.49.00 be used, as it encompasses "other waste and scrap" and represents non-alloy scrap similar to that generated in cage production.<sup>9</sup>

CPZ argues that Timken's claim that the cage steel scrap value should be considered aberrational is based on intuition, lacking support from record evidence. CPZ asserts that, though it may be logical to assume that said scrap is less valuable than its input to a manufacturer of bearings, the scrap may well be considered a valuable input to manufacturers of other products. CPZ contends that weighted averaged Indonesian import data for the same HTS subheading support this conclusion.<sup>10</sup> CPZ notes that the Department has used the same Indian HTS number to value this input in previous segments of the proceeding.<sup>11</sup> As such, CPZ asserts that the Department

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<sup>9</sup> Timken previously submitted all comments on steel scrap and cites to the Letter from Timken titled, "Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from The People's Republic of China (2006-2007): Additional Information Regarding Factor Values," (August 6, 2008).

<sup>10</sup> CPZ submits supporting data in CPZ's Rebuttal Brief at Exhibit 1.

<sup>11</sup> CPZ cites to, e.g., Preliminary Results of Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China, 71 FR 40069 (July 14, 2006) and supporting Surrogate Value Memorandum for the Preliminary Results of Review at 3 (unchanged in Final Results).

should continue to use Indian HTS subheading 7204.41 to value cage steel scrap for the Final Results. CPZ asks that, should Timken’s intuition be found sufficient enough to find the value aberrational, the Department should also consider the intuitively aberrational nature of the surrogate values used for bar steel and steel wire. See Comments 6 and 7, below.

**Department’s Position:**

In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate market economy country. The Department’s criteria for selecting surrogate value (“SV”) information are normally based on the use of publicly available information (“PAI”), and the Department considers several factors when choosing the most appropriate PAI, including the quality, specificity, and contemporaneity of the data.<sup>12</sup> Additionally, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs on a case-by-case basis.<sup>13</sup> As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the “best” available SV is for each input.<sup>14</sup>

In regard to the valuation of steel scrap generated from CPZ’s ring and roller production, we find that Indian HTS number 7204.29.90 (Non-Stainless Alloy Steel Waste and Scrap – Other) is more specific to the input in question than that which was used in the Preliminary Results because it does in fact cover alloy steel which CPZ uses in its production. Consequently, we find that this SV more appropriately reflects the scrap generated by CPZ in the production of rings and rollers. Thus, we have valued the steel scrap generated from CPZ’s ring and roller production using Indian HTS 7204.29.90 for the Final Results.

In regard to the valuation of steel scrap generated from CPZ’s cage production, we have valued the scrap using Indian HTS 7204.49.00. This is in keeping with recent decisions by the Department.<sup>15</sup> In the preliminary determination of Nails from the PRC, the Department valued steel scrap with Indian HTS 7204.49.00, the same Indian HTS category requested by Timken to value cage steel scrap in the Final Results in the instant case. A respondent in the aforementioned case requested that the Department revalue steel scrap for the final determination utilizing Indian HTS 7204.41, the identical Indian HTS category used for the Preliminary Results

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<sup>12</sup> See Steel Wire Garment Hangers from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008) (“Hangers”), and accompanying IDM at Comment 4.

<sup>13</sup> See Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006) (“Mushrooms”), and accompanying IDM at Comment 1 (articulating this practice); Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002), and accompanying IDM at Comment 2.

<sup>14</sup> See Mushrooms and accompanying IDM at Comment 1.

<sup>15</sup> See Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances 73 FR 33977 (June 16, 2008) (“Nails from the PRC”), and accompanying IDM at Comment 12, and Hangers and accompanying IDM at Comment 7.

in the instant case, arguing that the requested HTS category was more specific to the FOP in question and that the higher value for scrap than its input was not necessarily distortive of actual market conditions (similar to the assertions made by CPZ at present). In Comment 12 of the IDM for Nails from the PRC, the Department cited to a previous ruling wherein the Department stated that “it is clear that our steel scrap value selection produced an unreasonable result – a value for steel wire rod scrap (0.8390 USD/kg) that exceeded the price for steel wire rod (0.3119 USD/kg) – one that cannot be explained by any notes or data...”<sup>16</sup> The Department concluded that, although the relevance of the HTS description is an important factor in the selection of a surrogate value, it is not the sole consideration, and cannot be relied upon when it produces unreasonable results. The Department agreed with the petitioners and continued to use Indian HTS category 7204.49.00 for the final determination in Nails from the PRC. Given the nearly identical facts here, in which the surrogate value for cage steel scrap exceeds the surrogate value for the direct material input, and in keeping with Department precedent, we have revalued the steel scrap generated from CPZ’s cage production using Indian HTS 7204.49.00 for the Final Results.

### **Comment 6: Surrogate Value for Wire Rod**

CPZ argues that the World Trade Atlas (“WTA”) data used by the Department to calculate the surrogate value for wire rod (specifically, Indian HTS 7228.5090 valued at 173.18 Indian rupees or USD 3.877 per kg) is significantly higher than prices for comparable roller steel sold on the world market. CPZ notes that Department precedent requires margin calculations to be accurate, predictable, fair, and exclusive of aberrant data.<sup>17</sup> CPZ points out that, in a previous AR of TRBs from the PRC, the Department rejected the use of certain Indian import statistics in favor of Indonesian statistics when the Indian data was found to be aberrational as benchmarked against U.S. import statistics of a similar HTS basket category.<sup>18</sup> According to CPZ, bearing quality steel is an internationally traded commodity and, thus, the Department can accurately test the reliability of surrogate values by comparison to prices in other countries. CPZ asks that the Department reconsider the reasonableness of the Indian surrogate value when benchmarked against U.S. import data of a similar HTS category.

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<sup>16</sup> See Final Determination Pursuant To The Remand Order From The U.S. Court Of International Trade In Paslode Division of Illinois Tool Works, Inc. v. United States, Ct. No. 97-12-02161 (Jan. 15, 1999).

<sup>17</sup> CPZ cites to Lasko Metal Products, Inc. v. United States, 43 F.3d 1442, 1446 (Fed. Cir. 1994), quoting Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990) and Oscillating Fans and Ceiling Fans from the People’s Republic of China, 56 FR 55271, 55275 (Oct. 25, 1991); and Preamble, 62 FR 27296 (May 19, 1997).

<sup>18</sup> CPZ cites to, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China; Final Results of Antidumping Duty Administrative Reviews, 61 FR 65527, 65531 (December 13, 1996). CPZ stresses emphasis on this point and cites to further examples intended to show that the practice of benchmarking and substituting surrogate values has been a common practice in TRB ARs over the past decade. CPZ notes that the practice was affirmed in Timken Company v. United States, 59 F. Supp. 2d 1371 (Ct. Int’l Trade 1999). CPZ also cites to, Timken Company v. United States, Final Results Redetermination Pursuant To Court Remand, Slip Op. 02-38, Ct. No. 98-12-03235 (Ct. Int’l Trade 2002), where it points out that the Department defended the exclusion of aberrant Indian steel bar data using similar arguments to those forwarded by CPZ at present.

CPZ asserts that using the monthly range of U.S. import prices to set a benchmark, the Department's usual practice, is not the most accurate method, and suggests that the Department use the weighted average price of all imports for a given country. Citing to previously submitted data,<sup>19</sup> CPZ contends that ranged data can be misleading on account of volatile swings in certain months. CPZ argues that, should the Department continue to use this ranging methodology, certain aberrant monthly prices should be excluded from the calculation. CPZ contends that excluding select aberrational data from an overall benchmark dataset is consistent with Department practice in previous segments of the proceeding.<sup>20</sup> CPZ submits that, with or without these select values, the U.S. import price benchmark, as well as Philippine and Indonesian prices, clearly shows that the Indian steel wire rod data are aberrational on the whole.

CPZ argues that data received from Infodrive India ("Infodrive"), an import reporting service, included in its August 7, 2008, submission, show virtually no bearing quality steel imported under the HTS heading used by the Department for the surrogate value in question (HTS 7228.5090) during the POR.<sup>21</sup> CPZ claims that, although a substantial portion of total imports came in under the HTS, the description of the actual goods provided by the Infodrive demonstrates that few of these imports could be used to make TRBs. For instance, CPZ notes that certain imports were composed of expensive alloys (such as titanium), while others were described as for use in an entirely different production process (such as helicopter manufacturing).<sup>22</sup> CPZ claims that only two imports described by the Infodrive were definitively bearing quality steel that could be used to make rollers used for TRB production (SAE 52100 steel wire rods or small diameter bars), and both are valued much closer to the U.S. benchmark price level.

CPZ asserts that the Department must use data from potential surrogate countries should it determine that the Indian data are, indeed, aberrational. CPZ notes that the Department should find Indonesia to be the most appropriate surrogate or, in the alternative, use information from the Philippines submitted in its August 7, 2008, surrogate value submission.

Timken argues that the Department was correct in using data from the WTA to value CPZ's FOPs. Timken notes that the Department's practice is to stay within the primary surrogate

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<sup>19</sup> CPZ cites to Letter from CPZ titled, "Surrogate Values; Tapered Roller Bearings from the People's Republic of China," (August 7, 2008) ("CPZ's Surrogate Value Submission") at Exhibit 2.

<sup>20</sup> CPZ cites to Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001-2002 Administrative Review and Partial Rescission of Review, 68 FR 70488 (December 18, 2003) and accompanying IDM at Comment 3.

<sup>21</sup> CPZ claims that there is no accurate evidence on the record in regard to the total quantity of Indian imports under HTS 7228.5090 during the POR. CPZ notes that data submitted by Timken was not entirely contemporaneous with the POR, and asserts that the Department did not release documentation supporting its calculation of the surrogate value. CPZ believes that, nevertheless, the 895 metric tons reported by Infodrive India represents a significant portion of total imports under the HTS and is, therefore, a reliable figure.

<sup>22</sup> See CPZ's Case Brief at 9-10.

country to value all costs of production in order to ensure more accurate results,<sup>23</sup> and that the WTA data have been found to provide the best available SV information in countless cases.<sup>24</sup> Moreover, Timken points out that WTA data have been excluded only in cases where Indian data was unavailable, sparse, or demonstrably aberrational.<sup>25</sup> Timken insists that the data in question are publicly available, contemporaneous with the POR, exclusive of taxes, specific to the input in question, and represent significant quantities of imports, thus satisfying each element of the Department's SV test.<sup>26</sup> Timken notes that the Department puts the burden of proof on the respondents to demonstrate that the WTA import statistics are aberrational,<sup>27</sup> and because CPZ has failed to do so through concrete evidence, Timken asks that CPZ's claims be rejected.

Timken contends the Department was also correct to value wire rod using WTA data for Indian HTS 7228.5090 and should continue to do so for purposes of the Final Results. It notes that the Department has used Indian import values to determine the SV of steel rollers in most ARs since 1990-91, and has used HTS 7228.5090 in the most recent reviews, where applicable.

Timken notes that, though U.S. import statistics have been previously used as a benchmark to test the reliability of a SV, the Department has shied away from the practice in recent determinations, citing that it is inappropriate to compare values from countries at different levels of economic development.<sup>28</sup>

In this case, nevertheless, Timken argues that U.S. import data for HTS 7228.50.10.10, actually confirms the reasonableness of using Indian HTS 7228.5090 to value wire rod. Timken points out how the data, as supplied by CPZ, show the prices from individual countries ranging from \$0.81/kg to \$3.53/kg over the POR, with monthly prices swinging up to, or higher than, the surrogate value in question during certain months. Timken states that, given the difference in economic development between the U.S. and India, these prices support the viability of the current SVs. Timken also disagrees with CPZ's argument that certain monthly prices should be rejected as aberrational. Timken notes that, in evaluating possible surrogate values, the Department looks for categories whose prices are reflective of similar products. According to Timken, HTS 7228.5090 is a basket category that includes various products, all similar and

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<sup>23</sup> Timken cites to, e.g., Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005) ("CTL Plate from Romania"), and accompanying IDM at Comment 3.

<sup>24</sup> Timken cites to, e.g., Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 35646 (June 24, 2008) ("LWS from the PRC").

<sup>25</sup> Timken cites to CTL Plate from Romania.

<sup>26</sup> Timken cites to, e.g., OTR Tires and accompanying IDM at Comment 10.

<sup>27</sup> Timken cites to Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008) ("Carrier Bags from the PRC"), and accompanying IDM at Comment 6.

<sup>28</sup> Id.

related to wire rod. Timken states that the existence of a variety of U.S. benchmark prices, including some near the Indian price, again, supports reasonableness of the Indian HTS category.

Timken contends that the Infodrive India data submitted by CPZ<sup>29</sup> do not demonstrate that the WTA Indian import data should be rejected. Timken states that while CPZ claims that the Infodrive data may only show two entries to be ‘definitively’ 52100 bearing quality steel, this ignores additional entries that are likely to be bearing steels in a basket category, such as those called ‘high quality chromium steel’ that are priced closer to that of the surrogate value used for the Preliminary Results.<sup>30</sup>

Timken contends that the Indonesian and Filipino import data offered by CPZ do not call into question the Indian data because: a) CPZ has not proven the Indian data to be unreasonable in the first place, and b) the existence of lower value broad basket import data only prove that basket categories contain products that vary in price. Timken argues that the Filipino data are particularly inappropriate due to the comparatively small quantity of imports from a small number of countries. Timken concludes that the use of WTA Indian import data to value roller steel is supported by U.S. import data under the current benchmarking methodology, and the fact that CPZ could find different average values in broader HTS basket categories does not provide sufficient reason for the Department to choose a different SV.

#### **Department’s Position:**

As stated above, when selecting SVs for use in an NME proceeding, the Department’s preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the particular case-specific facts of the industry in consideration and with preference to data from a single surrogate country.<sup>31</sup> Moreover, the Department has determined that the burden is on the party making the claim in each case to establish that a particular SV is not appropriate based on the Department’s preferred criteria for selecting SVs.<sup>32</sup> As explained below, we find that CPZ has failed to prove the inadequacy of the Indian data or to demonstrate another value to be more appropriate.

First, CPZ cites to Indian Infodrive information to demonstrate the inadequacy of WTA India data. CPZ argues that the specificity of the Infodrive import descriptions suggest that the value of wire rod imported specifically for use in the production of bearings is lower than the WTA values used for the Preliminary Results. While CPZ has submitted a significant amount of Infodrive data on the record showing only a small amount of entries to be definitively bearing

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<sup>29</sup> Timken notes that the Department has previously rejected Indian Infodrive data unless proven to be more complete, reliable, or otherwise preferable to the WTA data. Timken cites to, e.g., OTR Tires, and accompanying IDM at Comment 10.

<sup>30</sup> Timken cites to CPZ’s Surrogate Value Submission at Exhibit 7.

<sup>31</sup> See, e.g., Hangers, and accompanying IDM at Comment 4.

<sup>32</sup> See Carrier Bags from the PRC, and accompanying IDM at Comment 6.

quality steel, as Timken points out, it is not clear that other entries could not be used in bearing production. Thus, the Infodrive data provided by CPZ in this case does not prove CPZ's claim that the Indian WTA data are inappropriate for use in valuing CPZ's wire rod. Moreover, the fact that import statistics may contain imports of materials other than the material that is being valued does not necessarily render those statistics inappropriate surrogate values. Thus, we do not believe the descriptions provided in the Infodrive database to be adequate record evidence to justify the rejection of WTA data as aberrational on the whole.

While CPZ has put information on the record indicating the Indian import data reflect a higher value when compared to U.S. import data and import data from the other potential surrogate countries, recent Department practice has found that existence of higher prices alone does not necessarily indicate that price data is distorted or misrepresented. Thus, the existence of a higher price is not sufficient to exclude a particular surrogate value, absent specific evidence the value is otherwise aberrational.<sup>33</sup> Specifically, in OTR Tires, the Department disregarded parties' arguments that the SV in question was unreliable due to a high price (in addition to a low quantity), stating, “[i]n this case, Starbright and TUTRIC have presented no evidence to substantiate their claim that certain data are aberrational. Rather, all they have done is claim that the quantities are low and the values are high and assert that this is sufficient to warrant exclusion.”<sup>34</sup> In the instant case, CPZ has only made an argument that the Indian data reflect a high value compared to U.S. import data and import data from Indonesia and the Philippines. Other than asserting a high price, we find that CPZ has not provided sufficient evidence that the Indian HTS data are otherwise unreliable. Thus, because CPZ has only asserted that the India data represent a high price, absent other information that the SV is unreliable, we have not benchmarked the Indian value against the U.S. import statistics or the import statistics from the other potential surrogate countries put on the record by CPZ, consistent with past practice.<sup>35</sup>

Though the Department finds it inappropriate to benchmark the Indian wire rod SV against the data placed on the record by CPZ, with respect to the Department's current benchmarking methodology, the Department's current practice is to benchmark surrogate values against import statistics from the list of potential surrogate countries for a given case, if available.<sup>36</sup> This is in accordance with section 773(c)(4) of the Act, stating that the Department must use “...to the

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<sup>33</sup> See Hangers, and accompanying IDM at Comment 4 (“While Respondents contend that the prices within the JPC data are higher than all other prices on the record, we find that, as discussed above, the burden is on Respondents to demonstrate that these prices are in fact aberrational. The fact that the JPC data are higher than other prices does not indicate that the JPC data are necessarily distorted and do not represent actual transactions.”).

<sup>34</sup> See OTR Tires, and accompanying IDM at Comment 9.

<sup>35</sup> See, e.g., Lightweight Thermal Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008), and accompanying IDM at Comment 10, “...{w}here a party provides sufficient evidence on the record to suggest that a particular surrogate value is aberrational or otherwise inappropriate for use, the Department examines appropriate benchmarks to test the reliability of that value.”

<sup>36</sup> See, e.g., Carrier Bags from the PRC, and accompanying IDM at Comment 6, and Saccharin from the People's Republic of China: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 51800 (September 11, 2007) (“Saccharin”), and accompanying IDM at Comment 2.

extent possible, the prices or costs of the factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the non-market economy (“NME”) country.” Since the United States is not at a level of economic development comparable to that of the PRC, the Department finds it inappropriate to benchmark surrogate value data against price data from the United States.

With respect to CPZ’s argument that we should rely on either the surrogate value data from Indonesia or the Philippines to value wire rod, we find that the Indonesian and Filipino HTS categories for wire rod are broader 6-digit HTS categories than the 8-digit Indian HTS category used in the Preliminary Results. The 8-digit Indian HTS category more closely reflects the factor input used by the respondent in the production of TRBs than the 6-digit categories from the other countries. As stated in Hangers, the Department finds that “specificity is a compelling reason that supports using... data to value the steel wire rod input.”<sup>37</sup> Because the HTS categories from the other potential surrogates submitted by CPZ are less specific, we find that using Indonesia and the Philippines as a surrogate value in the alternative would be inappropriate and have continued to use India HTS 7228.5090 to value wire rod for the Final Results.

#### **Comment 7: Surrogate Value for Steel Bar**

CPZ contends that, upon application of a benchmarking methodology based on the U.S. import price of steel bar (under HTS 7228.3020), it is apparent that the WTA Indian import data (under HTS 7288.3029) used by the Department to value bearing quality steel bar must be rejected as aberrational for purposes of the Final Results.<sup>38</sup> CPZ then cites to a previously submitted proprietary purchase order between CPZ and an unnamed supplier for bearing quality hot rolled steel bar that was negotiated during, but delivered after, the POR.<sup>39</sup> CPZ argues that the proprietary contract price is fully suitable for use as the SV. CPZ notes that, should the Department reject the negotiated value as a SV, it is at least supportive of both the conclusion that the Indian import data are aberrational and that the market price of Japanese steel exports to India is a viable SV in the alternative. CPZ, however, submits that Indonesian import data are the most viable surrogate, as it is the only dataset that comports with the benchmark data and have been used in past segments of this proceeding. CPZ contends that Timken has an abundance of international facilities and would have clear knowledge of world prices for steel bar, yet remains silent and makes no efforts to substantiate the Indian price of \$1,607/MT. CPZ alleges that Timken knows this is a “lucky” high price and will result in high antidumping margins for CPZ. CPZ states that the proceeding should not be based on luck, but about fairness and accuracy.

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<sup>37</sup> See, e.g., Hangers, and accompanying IDM at Comment 4.

<sup>38</sup> For steel bar, in its case brief, CPZ asks that the Department apply the benchmarking methodology established in the wire rod surrogate value argument, and then uses data supplied in CPZ’s Surrogate Value Submission at Exhibit 4 to restate the case for using weight-averaged benchmarks, as opposed to ranged values, that exclude aberrational monthly data. CPZ concludes that using this methodology still accounts for 95.25% of all imports, and shows a weighted-average U.S. price of \$966 per metric ton, ranging between \$895/MT and \$1139/MT per month.

<sup>39</sup> CPZ cites to CPZ’s Surrogate Value Submission at Exhibit 3.

Timken asserts that the Department correctly valued steel bars used to make cups and cones using WTA data under Indian HTS 7228.3029, and should continue to do so for the purposes of the Final Results. As argued in Comment 6 above, Timken contends that the U.S. import data submitted by CPZ in fact confirm the reasonableness of the Indian data due to the appropriateness of the HTS category and the range of import prices from country to country, and that CPZ does not provide sufficient evidence to prove that the Indian data are unacceptable. Timken again asserts that the existence of a variety of U.S. benchmark prices, including some near to the Indian price, supports the reasonableness of the WTA data, which are both from the primary surrogate country and satisfy the Department's surrogate value requirements. Timken addresses the aforementioned negotiated market price purchases made by CPZ, and points out that the Department's current policy in NME cases is to only use market prices paid for inputs as a value when said purchases account for over 33 percent of the total quantity purchased from all sources.<sup>40</sup>

**Department's Position:**

As noted above in Comment 6, the Department's SV selection methodology prefers that all valuation of factors be based on the same surrogate country and has found WTA import data to represent the best information available for valuation purposes because when taken as a whole – after excluding non-market, unspecified, and subsidized data points – they represent an average of multiple price points within a specific period and are tax-exclusive.<sup>41</sup>

With respect to CPZ's arguments that the steel bar SV used in the Preliminary Results was higher than U.S. data and data from Indonesia and the Philippines, the Department has found that the existence of higher prices alone does not necessarily indicate that price data is distorted or misrepresented and, thus, the existence of a higher price is not sufficient to exclude a particular surrogate value, absent specific evidence the value is otherwise aberrational.<sup>42</sup> Other than pointing out that the Indian import data reflect a high value, we find that CPZ has not demonstrated that the WTA Indian data are unreliable. As we stated above in Comment 6, because we find that CPZ has not provided evidence that the Indian HTS data are unreliable, we have not benchmarked the Indian value against the U.S. import statistics or the import statistics from the other potential surrogate countries.<sup>43</sup>

With respect to CPZ's request that the Department use only the Japanese to India export data, we find that CPZ has not demonstrated why these data are more appropriate than using the entirety of the Indian WTA dataset for any reason other than price. To use such a sub-set of the WTA

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<sup>40</sup> Timken cites to Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006) ("Antidumping Methodologies").

<sup>41</sup> See, e.g., LWTP from the PRC, and accompanying IDM at Comment 10.

<sup>42</sup> See, e.g., OTR Tires, and accompanying IDM at Comment 9, and Hangers, and accompanying IDM at Comment 4.

<sup>43</sup> See, e.g., LWTP from the PRC, and accompanying IDM at Comment 10.

data would be in direct contrast to the Department’s clear and well established practice of using the full WTA dataset (with the exclusions noted above) and as discussed in recent cases, e.g., OTR Tires.

Further, we disagree with CPZ’s assertion that the proprietary contract price it submitted on the record is fully suitable for use as the SV. While CPZ states in its case brief that the purchase contract was negotiated and signed during the POR, it states that CPZ did not take delivery of the steel bar until after the POR and we do not have evidence of an invoice showing market-economy purchases of steel bar dated during the POR. Because CPZ did not take delivery of the steel bar until after the POR, we find the purchase contract price to be unusable for valuation purposes.<sup>44</sup>

Thus, because the WTA India data are contemporaneous with the POR, are publicly available, and represent a broad market average, we find that they represent the best available information for purposes of valuing the steel bar input.<sup>45</sup> Moreover, we find that the evidence on the record does not support a finding that the WTA data for Indian HTS 7288.3029 to value steel bar are aberrational, and the Department has continued to use WTA data for Indian HTS 7288.3029 to value steel bar for the final results.

#### **Comment 8: Surrogate Value for International Freight**

CPZ asserts that the Department used incorrect data to determine the SV for international freight for the Preliminary Results. According to CPZ, the Department used shipping price quotes for 40-foot containers, though the record evidence shows that the subject merchandise was shipped in 20-foot containers.<sup>46</sup> Additionally, CPZ claims that the Department used container capacity information from a company, Alken-Murry Corp., whose products are shipped in forms of packaging not used by CPZ.<sup>47</sup> Moreover, CPZ argues that the Department was incorrect to base its surrogate value for international freight based on “Container Yard to Store Door” (“CY to SD”) terms of delivery, and contends that the record evidence shows that the actual terms were for “Container Yard to Container Yard” (“CY to CY”).<sup>48</sup> CPZ contends that the “CY to SD”

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<sup>44</sup> See Antidumping Methodologies, 71 FR at 61718 (“In determining whether market economy purchases meet this 33 percent threshold, the Department will compare the volume that the producer purchased from market economy sources during the period of investigation or review with the respondent’s total purchases during the period.”)

<sup>45</sup> See, e.g., Certain Frozen Warmwater Shrimp From the People’s Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007), and accompanying IDM at Comment 1 (“When selecting possible surrogate values for use in an NME proceeding, the Department’s preference is to use surrogate values that are publicly available, broad market averages, contemporaneous with the POR, specific to the input in question, and exclusive of taxes on exports”).

<sup>46</sup> CPZ cites to CPZ’s Surrogate Value Submission at Exhibit 2.

<sup>47</sup> CPZ cites to Memorandum titled, “Factors Valuations for the Preliminary Results of the Administrative Review, Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People’s Republic of China,” (June 30, 2008) (“FOP Memo”).

<sup>48</sup> CPZ cites to CPZ’s Surrogate Value Submission at Exhibit 5.

terms factor in four additional charges to the SV are not applicable under “CY to CY” terms. CPZ argues that, for purposes of the final results, the Department should disregard capacity information that reflects unrelated packaging materials, and should instead use the dry-freight container capacities as reported by Maersk, the company supplying the shipping rate quotes, revised so that the surrogate value is based on 20-foot containers under “CY to CY” terms.<sup>49</sup>

Additionally, according to CPZ, though the net weight (NETWGTU) for international freight, domestic brokerage, and trucking expenses had been reported in pounds, the Department calculated the surrogate values on a per-kilogram basis in the Preliminary Results. CPZ asks that the Department correct this error for the final results, and provides a revised SAS code suggested for this conversion.

Timken requests that the surrogate value reflect all evidence on the record. In particular, Timken contends that the recalculated surrogate value for international freight provided by CPZ is based on shipping the subject merchandise in 20-foot Maersk containers with a payload capacity of 28.3 tons. Timken cites to proprietary information supplied by CPZ,<sup>50</sup> and suggests that it would be inappropriate for the Department to use the revised SV provided by CPZ, and offers an alternative for calculating the surrogate international freight rate.<sup>51</sup>

**Department’s Position:**

We agree with CPZ, that the SV for international freight should reflect the shipping terms it had during the POR. Thus, as requested by CPZ, the Department has used dry-freight container capacities as reported by Maersk based on 20-foot containers under “CY to CY” terms. The Department also agrees with Timken, that the surrogate value for international freight should reflect all evidence on the record, and in the final results we have used an international freight calculation that accounts for certain proprietary shipping factors incurred by CPZ, as observed by Timken. Further, because CPZ reported its net weight in pounds, the Department has revised its calculation of domestic brokerage and inland trucking expenses to account for the weight in pounds (rather than kilograms). See Final FOP Memorandum.

**Comment 9: Calculation of Factors of Production for a Particular Model**

Timken asks the Department to recalculate FOPs for a particular CPZ model using facts available, due to an observed error with one CONNUM’s reported net weight. As facts available, Timken argues that the Department should apply the average ratios between the steel amounts consumed in production and the net weight observed for other part numbers to the net weight. Timken argues that the FOPs for this particular model submitted by CPZ should not be

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<sup>49</sup> See Letter from CPZ titled, “Tapered Bearings from the People’s Republic of China,” (August 26, 2008) (“CPZ’s Case Brief”) at Exhibit 5. CPZ has recalculated the rate based on their suggested criteria (Maersk 20-foot containers with “CY to CY” terms), resulting in a surrogate value of \$0.1105/kg or \$0.0501/lb.

<sup>50</sup> Timken cites to CPZ’s Surrogate Value Submission Exhibit 5 and Section A Questionnaire Response at Exhibit 17.

<sup>51</sup> See Timken’s Rebuttal Brief at page 18.

relied upon when calculating margins due to possible reporting errors, and facts available may be applied under section 776(a) of Act.

CPZ acknowledges that an inadvertent reporting error was made in the FOP calculation for the particular model called into question by Timken. CPZ states that the product was reported as a set of model numbers and submits that sufficient record evidence exists, based on steel consumption of similar models, to correct the error.

**Department's Position:**

We agree with Timken that there is an error with respect to this model's unit weight. However, we agree with CPZ that based on information contained in Peer Bearing Company's product brochure submitted in CPZ's Section A Questionnaire Response at Exhibit A-23, the model with the observed error resembles similar products for which we have correct net weight information. As noted above, sections 776(a)(1) and (2) of the Act state that the Department may use facts otherwise available in reaching the applicable determination if: (1) The necessary information is not available on the record, or (2) an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this subtitle, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified. Thus, pursuant to section 776(a)(1), because this model's correct unit weight is not currently on the record, as facts available, we have assigned the reported net weight for the similar products to the model with the incorrect unit weight.

**Comment 10: Treatment of Inland Freight for Subcontractors**

Timken requests that, for the final results, the Department include additional freight costs in its normal value calculations. Specifically, it asks that the Department include (1) the costs of transporting steel from JMG to the forging subcontractors, (2) the costs of transporting forged parts to the turning subcontractors, and (3) the costs of transporting turned parts to JMG for heat treatment. Timken points out that the Department has included these costs in the previous TRB-related normal value calculations.<sup>52</sup> Timken suggests that the Department determine the freight costs of shipping steel from JMG to the forging subcontractors and for turned parts from the subcontractor to JMG by weight averaging the subcontractors' distances to CPZ/JMG and multiplying the weighted-average distance by the SV for freight and by the FOP consumption factor for steel. However, Timken contends that the distances between the forging and turning subcontractors were not submitted on the record. Citing Sigma Corp. v. United States, 86 F. Supp. 2d 1344 (CIT 2000) ("Sigma"), it requests that the Department apply the Sigma cap distance to the surrogate value calculations for freight and the FOP consumption factor for steel between the forging and turning subcontractors.

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<sup>52</sup> Timken cites to, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of New Shipper Review, 64 FR 45511, 45513 (August 20, 1999), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997-1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review, 64 FR 61837 (November 15, 1999).

CPZ disagrees with Timken's request that the Sigma cap distance be used in the freight calculation between forging and turning subcontractors. CPZ points out that the distances from CPZ to CPZ's forging and turning subcontractors have been submitted in the record evidence.<sup>53</sup> CPZ suggests that, should the Department determine it necessary to use facts available to calculate the distances, the appropriate calculation should be based on the distance from CPZ's forging contractors to CPZ, weighted by the kg weight of the forging subcontractors finished parts, summed with the distance from CPZ's turning subcontractors, weighted by the kg weight of the turning subcontractors' parts -- all of which are on the record. CPZ argues that using the Sigma cap distance of 530 km would grossly overstate the largest possible physical distance between subcontractors and would not be based on the best information available.

**Department's Position:**

We agree with Timken that it is appropriate to add additional freight costs to account for transporting steel from JMG to the forging subcontractors, from the forging subcontractors to the turning subcontractors, and from the turning contractors to JMG. As Timken suggests, there is sufficient information on the record for the Department to accurately determine the freight costs of shipping steel from JMG to the forging subcontractors and for turned parts from the subcontractor to JMG. Thus, the Department has calculated these two costs by weight averaging the subcontractors' distances to CPZ/JMG and multiplying the weight-averaged distance by the surrogate value for freight and by the FOP consumption factor for steel as suggested by Timken.

With respect to calculating the cost for transporting the steel from CPZ's forging subcontractors to its turning subcontractors, the Department agrees with CPZ, and finds that the use of facts otherwise available is warranted with respect to the freight calculation between CPZ's forging and turning subcontractors pursuant to section 776(a) of the Act. As noted above, sections 776(a)(1) and (2) of the Act state that the Department may use facts otherwise available in reaching the applicable determination if: (1) The necessary information is not available on the record, or (2) an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this subtitle, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified. In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information." In such a case, the Department is permitted to select facts otherwise available that are adverse to the interests of the party. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>54</sup>

In this instance, we find that CPZ did not fail to cooperate to the best of its ability in providing this information and agree with CPZ that the use of Sigma distance would overstate the distance between its contractors. CPZ correctly points out that the distance from CPZ to each of its

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<sup>53</sup> CPZ cites to Section D Supplemental questionnaire response.

<sup>54</sup> See "SAA" at 870

forging and turning subcontractors is on the record and, logically, the distance between the subcontractors could not be more than the sum of each of their distances to CPZ. We agree with CPZ that this constitutes the best information available on the record, and that Sigma distance applied under AFA is inappropriate. In the final results, we have calculated this freight cost by taking the distance from CPZ's forging contractors to CPZ, weighted by the KG weight of the forging subcontractors finished parts, summed with the distance from CPZ's turning subcontractors, weighted by the KG weight of the product processed by the turning subcontractors, and multiplying the weighted average distance by the SV for freight and by the FOP consumption factor for steel.

#### **Comment 11: Treatment of Negative Dumping Margins (“Zeroing”)**

CPZ argues that for purposes of the Final Results, the Department should not set CONNUM specific negative margins to zero but instead should include these margins when calculating the aggregate margin.

Timken contends the Department has properly calculated CPZ's margin without credit for any non-dumped sales. Timken argues that, under the language of section 771(35)(B) of the Act, when the difference between normal value and the U.S. price results in a negative value, it is not dumping and the negative value cannot be used to reduce or eliminate dumping that is found. Citing case precedents including NSK Ltd. v. United States, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007), Timken contends that the Court of Appeals for the Federal Circuit has affirmed the Department's practice of not allowing offsetting credit for non-dumped sales as permitted under U.S. law.

#### **Department's Position:**

We disagree with CPZ and have not revised our calculation of the weighted-average dumping margins for the final results of this review with respect to the treatment of any non-dumped transactions that may potentially exist. Section 771(35)(A) of the Act, defines “dumping margin” as the “amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.” Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department has not permitted any such non-dumped sales to offset the amount of dumping found with respect to other sales. See Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 73 FR 58113 (October 6, 2008), and accompanying Issues and Decision Memorandum at Comment 5. The U.S. Court of Appeals for the Federal Circuit has held that this is a reasonable interpretation of the statute. See Timken, 354 F.3d at 1343; Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005).

While the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations, the Department has not adopted any other modifications concerning any other methodology or type of proceeding, such

as administrative reviews. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006).

Accordingly, and consistent with the Department's interpretation of the Act as described above, the Department has continued to deny offsets to dumping based on any export transactions that may exceed the normal value in this review. Consequently, we have not changed the methodology employed in calculating the respondent's weighted-average dumping margin for these final results.

**RECOMMENDATION:**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this review and the final weighted-average dumping margins in the Federal Register.

AGREE\_\_\_\_\_

DISAGREE\_\_\_\_\_

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

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Date